SUPREME COURT, U. S.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-663

ANITA LEE VAUGHN,

*Petitioner,*

v.

G. D. SEARLE & COMPANY,
a corporation,

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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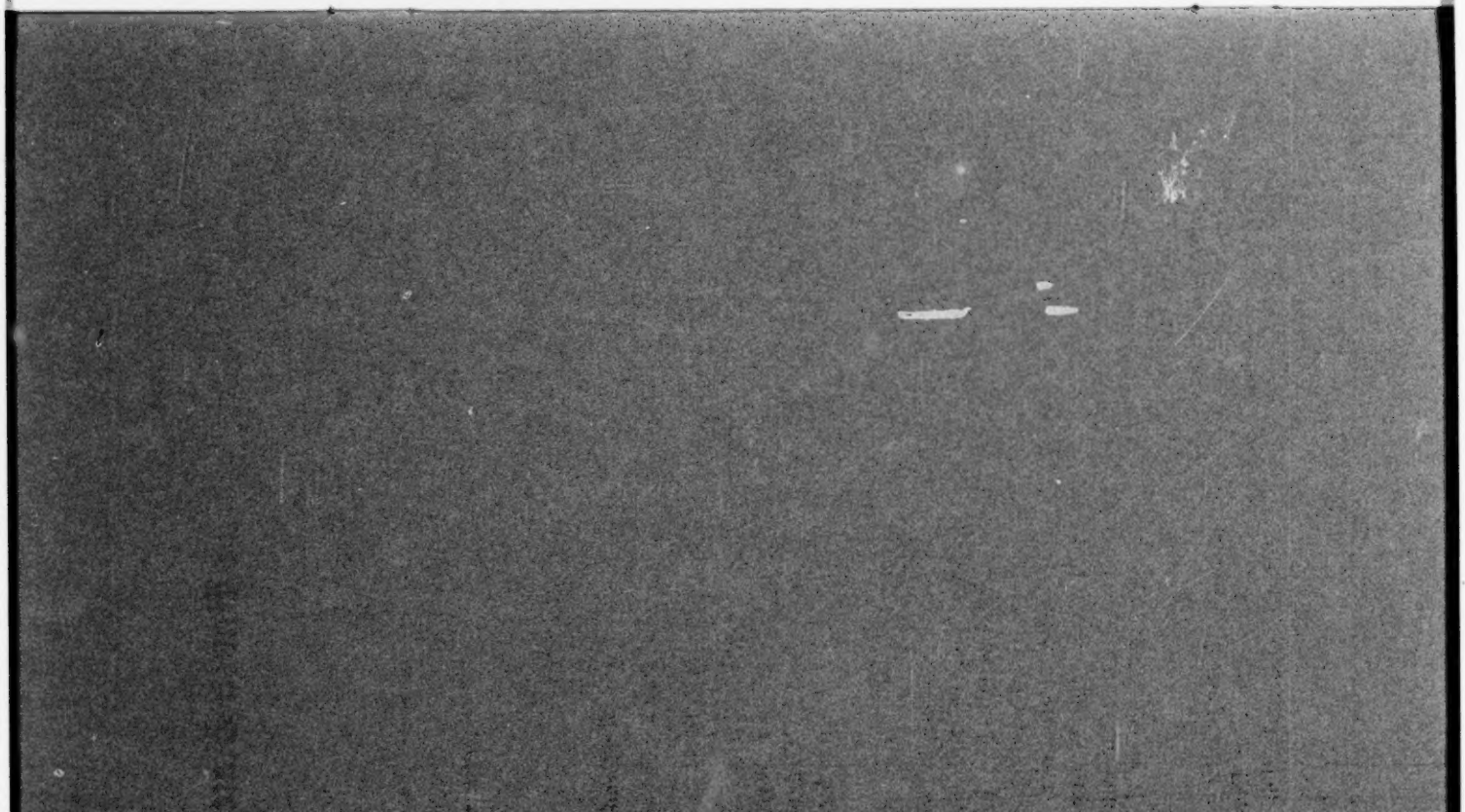

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This Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of the State of Oregon is submitted on behalf of G. D. Searle & Co., Respondent.

## STATEMENT OF THE CASE

Petitioner complained that she suffered a stroke which was caused by her consumption of birth control pills manufactured by Respondent, and that Respondent had failed to warn physicians of known dangers of consuming such pills. The jury returned a verdict for the Petitioner, and the trial court denied a motion for directed verdict by Respondent. However, the Supreme Court of Oregon reversed, holding that Respondent's motion for directed verdict should have been granted.

The evidence submitted in the course of the trial is summarized in the opinion of the Supreme Court of Oregon (Appendix A to Petition for Writ of Certiorari). The Su-

preme Court of Oregon concluded, based on its review of the evidence, that the trial court should have granted Respondent's motion for a directed verdict because Petitioner had failed to present any evidence to establish an essential element of the cause of action—causation.

The Supreme Court of Oregon ruled that under Oregon law in order to prevail on her theory that Respondent had failed in its duty to warn physicians with regard to potential dangers in the use of the drug, Petitioner had to establies causation; and in order to establish causation, she had to prove that she had premonitory symptoms of stroke which had been made known to her physicians (Appendix A to Petition, p. A6). If Petitioner did not have such symptoms, or did not make them known to her physicians, then those physicians could not have related those symptoms to any warning provided by Respondent Searle, and any alleged deficiency in the warnings related to stroke could not have been a substantial cause of the injuries suffered by Petitioner. Both parties agreed that none of plaintiff's prescribing or treating physicians were negligent in prescribing for or treating plaintiff (*Id.*, p. A6).

The Supreme Court of Oregon held that Petitioner had not shown that she had ever communicated any premonitory symptoms to her physicians, and that she had thus failed to establish causation (*Id.*, pp. A6-A7):

> "We find that plaintiff has offered no evidence, either direct or indirect, that she ever advised her treating physicians of symptoms which would have alerted them to the possibility of a stroke. Without such knowledge there was no way the physician could have related any warning (that there is a cause-and-effect relationship between the ingestion of the drug and a stroke) to plaintiff's particular case. Thus, there was no evidence that even a properly warned physician would have treated plaintiff differently or removed her from defendant's oral contraceptive prior to her stroke."

The court's conclusions with respect to the absence of any evidence to establish causation followed its careful examination of the testimony with respect to Petitioner's treatment by and communications with her doctors. This examination revealed that Dr. Nordlum, who had examined Petitioner in 1969 and prescribed Respondent's birth control pill, had found "no contraindications in plaintiff's medical history or her examination." (*Id.*, p. A3.) Dr. McCall, who saw Petitioner in 1970, continued her on Respondent's product following an examination in which Petitioner "reported no complaints with regard to the pill." (*Id.*, p. A3.)

Petitioner testified that she began to experience symptoms of illness in August or September 1970. After that time she visited two doctors: Dr. Chamberlin and Dr. Hakala. The circumstances of these visits and details with respect to the examinations and communications made by Petitioner to the doctors are set forth in detail in the opinion of the Supreme Court of Oregon. (*Id.*, pp. A4-A6.) While Petitioner apparently told the physicians that she suffered from dizziness and nausea, which are indications of viral syndrome *inter alia*, Petitioner did not relate to her physicians any symptoms which might have alerted the physicians to the possibility of the sudden onset of a stroke at a subsequent time (*Id.*, pp. A6-A9). The Oregon Supreme Court thus concluded (*Id.*, pp. A9-A10):

> "In summary, plaintiff's doctors had no information which would lead them to believe that plaintiff was about to suffer a cerebral vascular accident. Thus, even if the doctors had been adequately appraised of the cause-and-effect relationship between cerebral vascular accident and the ingestion of Defendant's drug Ovulen, they would have had no way of relating that information to plaintiff.
>
> "We conclude that there was no evidence that any failure to warn plaintiff's physicians was a substantial factor in producing plaintiff's injuries and that defendant's motion for a directed verdict should have been granted."

Plaintiff's Petition for Rehearing, which did not mention any constitutional question, was denied on August 6, 1975. A second petition for rehearing, which contained the first claim of a constitutional question, was denied on September 3, 1975.

## ARGUMENT

Petitioner argues that a Writ of Certiorari should be issued so that this Court may consider the question of what constitutional standards state courts must follow in preserving the right to jury trial in civil cases. Petitioner states that the several states adhere to different legal standards in determining under what circumstances a trial judge or an appellate court may set aside findings of fact by juries (Petition, p. 6, and Appendix D, p. A13 at seq.).

However, even if Petitioner had suggested a constitutional question in a timely fashion, this case would be an inappropriate vehicle for attempting to determine the point at which it would become unconstitutional for a trial judge to grant a motion for directed verdict (or for an appellate court to hold that such a motion should have been granted). In this case, the Supreme Court of Oregon, after careful examination of the record, concluded that Petitioner had offered "no evidence, either direct or indirect," that she had ever advised her physicians of symptoms which would have alerted them to the possibility of a stroke (Appendix A, p. A6). Thus, the Supreme Court of Oregon concluded, "there was no evidence" that a properly warned physician would have treated Petitioner any differently or removed her from Respondent's oral contraceptive prior to her stroke (*Id.*, p. A7).

Given the circumstances of this case and the "no evidence" standard applied by the Supreme Court of Oregon, Petitioner is really requesting that this Court review the decision below and hold that a trial judge cannot constitutionally grant a motion for directed verdict even though in its judgment there is *no evidence* to support the existence

of a necessary element of the cause of action—in this case, causation. Petitioner's argument thus amounts to the contention that a trial judge or an appellate court can never set aside a jury verdict, for to do so would be to deprive the party who prevailed before the jury of the constitutional right to a jury trial.

Despite Petitioner's citations to Justice Story and George Washington (Petition, p. 10), there is no authority for the proposition that a denial of trial by jury occurs simply because a trial judge grants a motion for directed verdict or an appellate court holds that a trial judge erred in failing to grant such a motion.

Far from seeking to uphold the right to trial by jury, Petitioner—given the circumstances of this case—is really asking that juries be allowed to grant verdicts in the absence of any evidence to support essential elements of a cause of action. Petitioner's petition would not further the preservation of the right to jury trial, but would necessarily undermine a basic principle of the law itself.

Accordingly, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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